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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/501,846

06/27/2005

Ellis I Betensky

LCI-101

6391

23520

7590

02/12/2008

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EXAMINER

THOMAS, BRANDI N

ART UNIT

PAPER NUMBER

2873

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DELIVERY MODE

02/12/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/501,846 | Applicant(s) BETENSKY ET AL. | |
| | Examiner BRANDI N. THOMAS | Art Unit 2873 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 50-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 50-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>Detailed Action</u> . |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 50-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holcomb (3865468) in view of Akagi et al. (5235458).

Regarding claim 50, Holcomb discloses, in figure 1, a method for providing an optical system with the capability of being switched between a lower magnification setting and a higher magnification setting (col. 2, lines 66-68) comprising: (a) providing a switching mechanism (30) having a first rest position corresponding to the lower magnification setting (sleeve, 24, is rotated to rest position for lenses, 16 and 18) (col. 3, lines 14-17) and a second rest position corresponding to the higher magnification setting (stop, 34, determines the rest position for lenses 20 and 22) (col. 3, lines 7-9), said switching mechanism (30) having a path of motion between said first and second rest positions (col. 3, lines 7-17); and b) providing automatic switching to the first rest position once the switching mechanism has moved past a first position along its path of motion and automatic switching to the second rest position once the switching mechanism has moved past a second position along its path of motion (col. 3, lines 18-21 and 28-30) but does not specifically disclose providing a housing having an exterior surface, said housing surrounding the optical system, except at those locations where, during use, light from an object will enter the optical system and light to be perceived by a user will leave the optical

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system; and locating the switching mechanism so that it occupies a portion of said exterior surface. Akagi et al. discloses, in figures 1, 3, and 4, providing a housing having an exterior surface, said housing surrounding the optical system, except at those locations where, during use, light from an object will enter the optical system and light to be perceived by a user will leave the optical system (col. 1, lines 55-65 and col. 3, lines 36-41); and locating the switching mechanism so that it occupies a portion of said exterior surface (col. 3, lines 27-30). Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to combine the device to combine the device of Holcomb with the housing of Akagi et al. for the purpose of protecting the optical system in the binoculars.

Regarding claim 50, Holcomb discloses, in figure 1, a method for providing an optical system with the capability of being switched between a lower magnification setting and a higher magnification setting (col. 2, lines 66-68), wherein the automatic switching is provided by a torsion spring (32) (col. 2, lines 62-64 and col. 3, lines 5-7 and 14-17).

Regarding claim 51, Holcomb discloses, in figure 1, a method for providing an optical system with the capability of being switched between a lower magnification setting and a higher magnification setting (col. 2, lines 66-68), wherein the optical system comprises a binocular (col. 4, lines 65-68).

Regarding claim 50, Holcomb discloses, in figure 1, a method for providing an optical system with the capability of being switched between a lower magnification setting and a higher magnification setting (col. 2, lines 66-68) but does not specifically disclose wherein the binocular comprises two barrels, the housing comprises a bridge between the two barrels, and the portion of the housing's exterior surface occupied by the switching mechanism is a portion of the

exterior surface of the bridge. Akagi et al. discloses, in figures 1, 3, and 4, wherein the binocular comprises two barrels (11 and 12), the housing comprises a bridge between the two barrels, and the portion of the housing's exterior surface occupied by the switching mechanism is a portion of the exterior surface of the bridge (figure 4A) (col. 3, lines 37-40 and col. 5, lines 31-40).

Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to combine the device to combine the device of Holcomb with the housing of Akagi et al. for the purpose of protecting the optical system in the binoculars.

Response to Arguments

3. Applicant's arguments with respect to claims 50-53 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANDI N. THOMAS whose telephone number is (571)272-2341. The examiner can normally be reached on Monday - Thursday from 6-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Mack can be reached on 571-272-2333. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brandi N Thomas
Examiner
Art Unit 2873

BNT
February 6, 2008

/Ricky L. Mack/
Supervisory Patent Examiner, Art Unit 2873